

# SENATE BILL REPORT

## SB 5530

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As Reported by Senate Committee On:  
Financial Institutions, Housing & Insurance, February 18, 2009

**Title:** An act relating to creating the guaranteed asset protection waiver model act.

**Brief Description:** Creating the guaranteed asset protection waiver model act.

**Sponsors:** Senators Hobbs and Benton.

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Insurance: 2/17/09, 2/18/09 [DPS].

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Majority Report:** That Substitute Senate Bill No. 5530 be substituted therefor, and the substitute bill do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin, McDermott, Parlette and Schoesler.

**Staff:** Philip Brady (786-7460)

**Background:** Because of depreciation rates, the outstanding loan balance on a financed vehicle may be significantly higher than a vehicle's actual cash value. This is particularly true during the first few years of the loan. If a vehicle is totaled in an accident or stolen, the primary insurance settlement is usually based on the vehicle's actual cash value, not the outstanding loan balance. This may create a deficiency balance, or "gap," that consumers must pay.

Some creditors offer general asset protection waivers (GAP waiver or waiver). A GAP waiver is a contract where a creditor agrees to waive the difference between the fair market value of a totaled or stolen vehicle and the outstanding loan balance, often in exchange for a separate payment. This separate payment can be either one-time or reoccurring. These agreements are not specifically regulated in statute.

The Insurance Commissioner (Commissioner) regulates insurance in Washington. This includes oversight of rates, forms, financial conditions, claims practices, and other matters related to the business of insurance.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill (Recommended Substitute):** Businesses are not permitted to offer or sell GAP waivers unless they are registered with the Commissioner. Applicants for registration must disclose specific information and pay a \$250 fee, and must inform the commissioner of any changes in any collected information.

Retail car sellers who offer financing and want to sell waivers must have an insurance policy that covers their waiver obligations. All other creditors are permitted, but not required, to insure their waiver obligations. Purchase of a waiver cannot be a condition of an offer of credit or the term of sale or lease and cannot be discriminatory.

Waivers must contain particular disclosures that are written in clear, understandable language, and must clarify the terms of cancellation and refund, a free look period, and procedures necessary for obtaining the waiver's benefits. If a waiver is cancelled due to default or repossession, any refund will be paid to the creditor.

The Commissioner may enforce the chapter, and may impose penalties up to \$200 per violation. Persons who sell GAP waivers without registering with the Commissioner are subject to a \$25,000 civil penalty and personal liability for performance. If sale without registration is done knowingly, sale constitutes a Class B felony.

It applies to all GAP waiver agreements entered into after January 1, 2010.

**EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute):** The act no longer applies to sellers who assign all GAP waivers within 20 days. Sellers cannot engage in false advertising or discriminate based on certain factors. Violations of the act are subject to a \$200 fine rather than a \$500 fine, and selling waivers without registering with the Commissioner may result in a \$25,000 civil penalty, personal liability, and, if done knowingly, criminal sanctions.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: This provides a safe harbor for car buyers. This act is agreed to by industry and the regulator. The moment a car is driven off a lot, it decreases in value. This is protection for car buyers, and creates needed regulation that has been adopted in Tennessee and Georgia. It is a functional agreement.

**Persons Testifying:** PRO: Senator Hobbs, prime sponsor; Mel Sorensen, Guaranteed Asset Protection Alliance; Carol Sureau, Office of the Insurance Commissioner.